

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MINNESOTA**

In re: Baycol Products Litigation

UNITED STATES OF AMERICA *ex rel.*
LAURIE SIMPSON,

Honorable Michael J. Davis
United States District Court Judge

Plaintiff,

v.

BAYER HEALTHCARE
PHARMACEUTICALS, INC.;
BAYER CORP.; and
BAYER A.G.,

MDL No. 1431
Civil. No. 08-5758(MJD)(SER)

Defendants.

JOINT STATUS REPORT

In accordance with the Court’s January 18, 2019 Order (ECF No. 178), Relator Laurie Simpson (“Relator”) and Defendants Bayer Healthcare Pharmaceuticals, Inc., Bayer Corp., and Bayer A.G. (“Bayer”) (together, the “Parties”), respectfully submit the following joint status report regarding discovery in advance of the February 26, 2019 status teleconference before Your Honor.

1. Initial Request for Production. On January 30, 2019, Relator served her initial request for production upon Bayer for the discovery produced in In re Baycol (the “MDL”). Relator requested “all documents, data, depositions transcripts with associated exhibits, privilege and redaction logs, requests for admissions with associated responses, interrogatories with

associated responses, and discovery requests with associated responses, produced by any party or non-party in the Baycol MDL.” Relator is presently in possession of Bayer’s document production from the MDL and that of certain non-parties; the Parties are continuing to meet and confer about the completeness of the production, issues concerning data corruption and data accessibility and whether there exists additional discovery that could be relevant to Relator’s claims and that are not included on the MDL production CDs.

2. GSK Discovery from MDL. Relator has requested the documents produced by GlaxoSmithKline in the MDL. Relator has confirmed that she is in possession of what she believes is the GSK production, but is seeking to confirm the completeness of the production. The Parties will continue to meet and confer on this issue.

3. Redactions. In the course of her review of the MDL discovery currently in her possession, Relator identified documents that include redactions on seemingly relevant information – such as redactions of the names of the individuals at the Department of Defense who communicated with Bayer. On February 11, 2019, Relator inquired with Bayer about these redactions and provided Bayer with several examples of documents containing such redactions. Bayer reviewed these documents and provided Relator with additional information about the basis for redactions in the MDL production generally, including redactions that were required by FDA regulations. Relator has requested logs setting forth the basis for redactions applied to documents in the MDL. The Parties will continue to meet and confer on this issue.

4. Document Custodians. Relator provided Bayer with an initial list of 23 current or former Bayer employees who Relator believes are potential document custodians and are likely to possess information relevant to her claims. Bayer reviewed the list and identified for Relator the 15 individuals on her list whose data was produced in the MDL, meaning that Relator is

already in possession of documents from these individuals based on the parameters for document collection utilized in the MDL. Relator has requested that Bayer provide the relevant search terms that were used to identify responsive documents in the MDL. Bayer also identified for Relator the 14 custodians on her list who were deposed in the MDL and has offered to produce deposition transcripts for those custodians. For the custodians on Relator's list whose data was not produced in the MDL, Bayer is investigating whether it has any information related to these individuals from the relevant time period that could be relevant in this matter; the Parties will continue to meet and confer about the parameters and methodology of this search. The Parties will additionally continue to meet and confer on the other issues related to document custodians.

5. Additional Orders. The Parties met and conferred regarding an ESI protocol governing future productions of electronic discovery, a HIPAA qualified protective order, and an order governing the inadvertent disclosure of privileged material. Relator agreed to prepare the initial drafts of these documents for the Parties' review and consideration.

6. Common Court Reporter. The Parties discussed utilizing a common court reporter to make the taking of deposition testimony more efficient, and Bayer has proposed a court reporter service.

Dated: February 19, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 19, 2019, the foregoing document was served this day on all counsel of record via CM/ECF.

/s/ Asher S. Alavi